

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**JOHN PAUL THOMAS,**

**Petitioner,**

**v.**

**No. CV 09-1009 WJ/LAM**

**GEORGE TAPIA,**

**Respondent.**

**ORDER**

**THIS MATTER** is before the Court on Petitioner's *Motion to Consolidate and for Leave to Amend* (Doc. 2), *Motion for Summary Judgment in Favor of Double Jeopardy Claim and Memorandum of Law in Support of Motion* (Doc. 7), and *Motion for Order to Disclose* (Doc. 9).

In his motion to consolidate and to amend, Petitioner asks the Court to consolidate his earlier petition in Cause No. CV 08-1016 JH/WPL with the instant petition. The previous petition, however, has been dismissed without prejudice, thereby precluding consolidation. Alternatively, Petitioner will be allowed to submit an amended petition asserting all of his claims. The Court may not properly enter summary judgment at this stage of the case. *See* Rule 4 of the Rules Governing Section 2254 Cases (explaining that a Section 2254 petition must undergo a preliminary review by the Court and, if the Court determines that the petition should not be summarily dismissed, the Court may then order service on the respondent and order respondent to file an answer, motion, or other response to the petition). The motion for summary judgment will, therefore, be denied without prejudice. The Court will also deny Petitioner's motion for state court transcripts at this time. The Court will decide whether the state court transcripts are necessary to decide Petitioner's claims after

Petitioner has an opportunity to submit an amended petition and the Court determines whether those claims will proceed.

**IT IS THEREFORE ORDERED** that Petitioner's *Motion to Consolidate and for Leave to Amend* (Doc. 2) is **GRANTED in part** and **DENIED in part**, and, **within twenty-one (21) days** from entry of this Order, Petitioner may file an amended petition asserting all of his claims.

**IT IS FURTHER ORDERED** that Petitioner's *Motion for Summary Judgment in Favor of Double Jeopardy Claim and Memorandum of Law in Support of Motion* (Doc. 7) is **DENIED without prejudice**.

**IT IS FURTHER ORDERED** that Petitioner's *Motion for Order to Disclose* (Doc. 9) is **DENIED without prejudice**.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**